

### **REMARKS**

Claims 1-9, 11-28, 30-34, 44-49, 51-52, 55-64, 66 and 67 are now pending in the application. Claims 1-34, 44-52 and 55-66 stand rejected. Claims 53-54 have been previously canceled. Claims 10, 29, 35-43, 50 and 65 have been canceled herein, Claims 1, 22, 44, 52, 57, 62, 63 and 66 have been amended and Claim 67 is new. Support for the amendments and new claim can be found throughout the application, drawings and claims as originally filed and, as such, no new matter has been presented. The Examiner is respectfully requested to reconsider and withdraw the rejections in view of the amendments, new claim and remarks contained herein.

### **DOUBLE PATENTING REJECTION**

Claims 1-66 stand provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1-44 of copending Application No. 10/299,969. This rejection is respectfully traversed.

Applicants request that this provisional rejection be held in abeyance until claims have been allowed in at least one of the present Application or U.S. Patent Application No. 10/299,969.

### **REJECTION UNDER 35 U.S.C. § 102**

Claims 1-34, 44-52, and 55-66 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Solomon (U.S. Pat. Pub. No. 2003/0018251; hereinafter "Solomon"). This rejection is respectfully traversed.

Solomon discloses a navigation system that is capable of tracking sensors on a lasso catheter 10 and an ablation catheter 11. Solomon teaches generating a movie of the beating heart using multiple images acquired from an imaging device, and superimposing the position of the catheters 10, 11 on the beating heart. Solomon teaches guiding the lasso catheter 10 to a desired location within the heart and then guiding the ablation catheter 11 to a desired electrode on the lasso catheter 10 to ablate a desired location within the heart. In contrast to the teachings of Solomon, independent Claim 1 recites:

...a controller in communication with said anatomical gating device, said imaging device and said tracking device and operable to register said image data with the region of the patient in response to said physiological event, said controller further operable to superimpose an icon representing the instrument onto the image data of the region of the patient, based upon the position tracked by said tracking device and said controller operable to provide an **estimated optimized site to navigate the instrument to** (emphasis added).

In view of the above discussion, Applicants note that Solomon does not teach, suggest and disclose each and every element of independent Claim 1. Rather, at best, Solomon discloses determining the location of the instrument and registering the instrument to the movie of the beating heart. Note that Solomon does not disclose a controller that is operable to provide an estimated optimized site to navigate the instrument to as claimed. Accordingly, for at least these reasons, it is respectfully submitted that Solomon does not anticipate at least these features of Claim 1.

With regard to independent Claim 22, Applicants note that independent Claim 22 recites:

...a display operable to **display the icon of the estimated optimized site** and the icon representing the instrument in the patient; and

wherein the optimized site is an **optimized lead placement site** in a coronary sinus region (emphasis added).

Claim 52 also recites:

...delivering a **lead to the optimized site**; and  
**superimposing an icon of the optimized site** and an icon of the location of the catheter **on the image data** (emphasis added).

Further, Claim 63 recites:

...said controller further operable to register said synchronized image data of the region of the patient in response to said physiological event and to provide an **estimated optimized site** to navigate the instrument to, said controller further operable to superimpose an icon representing the instrument on to the image data of the region of the patient, based upon the position tracked by said tracking device, and to **superimpose an icon of the estimated optimized site on to the image data** of the region of the patient;...(emphasis added).

In view of the above, Solomon does not teach, suggest and disclose each and every element of independent Claims 22, 52 and 63. Rather, Solomon teaches guiding a lasso catheter 10 and an ablation catheter 11. Further, Solomon teaches displaying merely an image of the anatomy and an illustration of the catheters 10, 11, and does not teach displaying an icon of the estimated optimized site as claimed. Accordingly, for at least these reasons it is respectfully submitted that Solomon does not anticipate at least these features of Claims 22, 52 and 63.

Regarding Claim 44, note that Claim 44 recites:

...capturing image data in response to the physiological event **outside the patient with an ultrasound probe;**

registering the captured image data to the patient during the physiological event;...

displaying the ultrasound image data from **a virtual viewpoint of the instrument** (emphasis added).

In view of the above, Solomon does not teach, suggest and disclose each and every element of independent Claim 44. Rather, at best, Solomon teaches displaying image data with the instrument superimposed on the patient data, and not displaying image data from a virtual viewpoint of the instrument, as claimed. Accordingly, for at least these reasons it is respectfully submitted that Solomon does not anticipate at least these features of Claim 44.

Accordingly, in view of at least the above discussion, Applicants respectfully submit that Solomon does not teach, suggest or disclose each and every element of Claims 1, 44, 52 and 63, and thus, Applicants respectfully request the Office to reconsider and withdraw the rejection of Claims 1, 44, 52 and 63 under 35 U.S.C. § 102(e).

In addition, since Claims 2-9, 11-21, 23-28, 30-34, 45-49, 51, 55-62, 64 and 66 depend directly or indirectly from either independent Claim 1, 44, 52 or 63, Claims 2-9, 11-21, 23-28, 30-34, 45-49, 51, 55-62, 64 and 66 should be in condition for allowance for at least the reasons set forth for Claims 1, 44, 52 and 63 above. Moreover, these claims also have independently allowable subject matter. For example, Claim 16 is believed to have independently allowable subject matter as Solomon does not teach, suggest or disclose a guided biopsy catheter that is operable to be tracked by a tracking

device through a region of the patient. Claim 57 is also believed to have independently allowable subject matter as Solomon does not teach, suggest or disclose delivering the lead to a coronary sinus region. Claim 62 is believed to have independently allowable subject matter as Solomon does not teach, suggest or disclose delivering the lead through a catheter to the coronary sinus region of the patient. Accordingly, Applicants respectfully request the Office reconsider and withdraw the rejections of Claims 2-9, 11-21, 23-28, 30-34, 45-49, 51, 55-62, 64 and 66 under 35 U.S.C. § 102(e).

#### **NEW CLAIM**

Claim 67 is new. Support for Claim 67 can be found in at least paragraph [00115], and at least in Fig. 13. As the cited art does not teach, suggest or disclose each and every element of Claim 67, Claim 67 is believed to be patentable and in condition for allowance. Prompt and favorable consideration of this new claim is hereby respectfully requested.

#### **CONCLUSION**

It is believed that all of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider and withdraw all presently outstanding rejections. It is believed that a full and complete response has been made to the outstanding Office Action and the present application is in condition for allowance. Thus, prompt and favorable consideration of this amendment is respectfully requested. If the Examiner

believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (248) 641-1600.

Respectfully submitted,

Dated: July 28, 2008

By: Richard W. Warner  
Richard W. Warner, Reg. No. 38,043  
Erica K. Schaefer, Reg. No. 55,861

HARNESS, DICKEY & PIERCE, P.L.C.  
P.O. Box 828  
Bloomfield Hills, Michigan 48303  
(248) 641-1600

RWW/EKS/chs